

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE BOARD OF ELECTRICITY

In the Matter of the Master Electrician
and Electrical Contractor Licenses of
Duane W. Marzolf, d/b/a Modern
Electric.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

The above matter came on for hearing on January 29, 2003 at the Office of Administrative Hearings in Minneapolis. Michele M. Owen, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota 55103-2106 appeared on behalf of the Complaint Review Committee of the Board of Electricity (Committee). Duane W. Marzolf (Licensee, Respondent), 16995 Mississippi Boulevard, Little Falls, Minnesota 56345 appeared on his own behalf, without counsel. The record in this matter concluded at the end of the hearing on January 29.

NOTICE

This Report is a recommendation, not a final decision. The Board of Electricity will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact John A. Schultz, Executive Secretary, Minnesota Board of Electricity, S173 Griggs Midway Building, 1821 University Avenue, St. Paul, Minnesota 55104 for questions about the procedure for filing exceptions or presenting argument.

If the Board fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Board must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline to be imposed.

STATEMENT OF ISSUE

Whether disciplinary action should be taken against the master electrician and electrical contractor licenses of Duane W. Marzolf, and/or against Mr. Marzolf individually, pursuant to Minn. Stat. § 326.242, subds. 9 and 9a for numerous instances of failing to submit to the Board various requests for electrical inspection together with inspection fees at or before the commencement of installations required to be inspected by the Board, failure to cooperate with the Board as required by Minn. Stat. § 326.242,

subd. 9i(4), and failure to comply with the provisions of a Stipulation and Consent Order Agreement entered into by Duane W. Marzolf (Respondent) and the Board on September 13, 2000.

Based on all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On September 13, 2000, in connection with an earlier contested case proceeding involving the licenses of the Respondent, Mr. Marzolf and the Board's Complaint Committee entered into a Stipulation and Consent Order. OAH Docket No. 9-1400-12919-2. That Stipulation and Consent Order are attached to the Notice of Hearing in this matter, as Exhibit A. In the body of the document, Mr. Marzolf admitted to a detailed, 51-part statement of facts, which statement details numerous incidents of violation of §§ 326.242, subd. 5, 326.244, subds. 2(a) and 2(b) and Minn. Rules 3800.3500, 3800.3570, 3800.3760, subp. 2, and 3800.3810, subp. 6, (now 3800.3800). The detailed facts resemble closely the allegations specified in the Notice of and Order for Hearing and Prehearing Conference in this matter, as detailed at allegations 1-30 in the Notice issued in this matter on September 26, 2002.

2. In connection with settling the earlier contested case, the Respondent agreed that the Board, in its discretion, could issue an order to Mr. Marzolf and require him to comply with various remedies, such as censure of his license, payment of a civil penalty of up to \$10,000, and to provide to the Board a list of all the jobs he or his business engaged in since on or about July 1, 1997 but for which requests for electrical inspection had not been filed; to file with the Board a request for electrical inspection on each such job, including the inspection fee and investigative fee, and to submit payment for all outstanding orders for payment issued by the Board for shortages in inspection fees or investigative fees related to the specified instances contained in the Consent Order. The Respondent also agreed that any violation of the Stipulation and Consent Order allowed the Board to impose additional discipline, after an additional opportunity for hearing. Mr. Marzolf submitted payments subsequently of \$2,500 for a civil penalty and \$1,885 in fees.

3. A prehearing conference was conducted in this matter on December 3, 2002. At the prehearing conference, the parties (in the absence of the Administrative Law Judge) reached a tentative agreement, which was to be reduced to writing and forwarded to Mr. Marzolf for his signature. Mr. Marzolf signed the document, but when the Board of Electricity met on January 14, 2003, Mr. Marzolf made the decision not to enter into the proposed settlement. This hearing process was resumed accordingly.

4. At the hearing on January 29, 2003, Mr. Marzolf admitted to allegations 1-30, which allegations lay out various instances involving failures to submit to the Board requests for electrical inspection or payments of inspection fees for various jobs performed by his business. Mr. Marzolf admitted also that he had failed to cooperate with the Board as required by statutes, and that he had failed to comply with the

provisions of the Stipulation and Consent Order Agreement entered into by himself and the Board on September 13, 2000.

5. Mr. Marzolf made no factual defense regarding the substance of the allegations in the Notice of and Order for Hearing and Prehearing Conference issued in this matter, which makes reference to the terms and conditions of the Stipulation and Consent Order of September 13, 2000 (Exhibit A to the 2002 Notice), in addition to the additional allegations specified in the Notice of September 26, 2002.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Board of Electricity have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 326.241 and 326.242.

2. Any of the above Findings of Fact more properly termed Conclusions are hereby adopted as such.

3. The Board of Electricity has given timely and proper notice of the prehearing conference and hearing in this matter, and complied with all relevant substantive and procedural requirements of law and rule.

4. Because of the Respondent's admission to the allegations detailed in the Notice of and Order for Hearing and Prehearing Conference in this matter, the facts laid out in those allegations may be taken as true or deemed proved.

5. Based upon the facts set out in the allegations of the Notice of and Order for Hearing and Prehearing Conference, the Respondent has violated Minn. Stat. §§ 326.242, subd. 9i(4), 326.244, subds. 2(a) and (b), and Minn. Rules 3800.3760, subp. 2 and 3800.3800.

6. Disciplinary action against the Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that disciplinary action be taken against the Master Electrician License and Electrical Contractor License of Duane W. Marzolf, d/b/a Modern Electric.

Dated this 28th day of February, 2003.

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Reported: Taped

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Board is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Administrative Law Judge is restricted by Minnesota law in professional and occupational licensure cases from making specific recommendations on proposed disciplinary action against such licensees. The reasoning is that the licensing Boards are viewed as experts best able to judge the quality of the violations before them, and what discipline is appropriate. Padilla v. Board of Medical Examiners, 382 N.W.2d 876 (Minn. App. 1986). The Administrative Law Judge accordingly has left as open-ended the recommendation for disciplinary action.

It is common, however, for the Administrative Law Judge to indicate in the Memorandum portion of a report the impressions gained about appropriate discipline, for the governing Board to accept as they wish, tempered by their greater expertise and “institutional history” of discipline in similar analogous situations. The Administrative Law Judge in this matter is without a sense of the level of discipline imposed in past, similar cases, and is without knowledge of the seriousness of the violations in the eyes of the Board.

The Licensee, in his attempt to mitigate whatever discipline the Board may impose, argues (without proving it) that the violations he admits to were “minor”. Such arguments, based on conclusions rather than facts, cannot be used by the Judge as a basis for implying that the Board should be lenient.

Similarly, while the Respondent argues that \$6,000 in civil penalties and “miscellaneous other fines, plus loss of my business for three to five years” is too heavy a penalty for the violations admitted to by him in this matter (this apparently is his version of an offer made at some point by the Committee), he has backed up that assertion with insufficient facts and concludes that the violations are “minor”. Mr. Marzolf believes the penalties proposed are disproportionate to violations involving a “failure to pay \$900 in permits”. In addition to being insufficient factually for standing as a basis that the Respondent has established a case for lenient treatment, the argument is misplaced. What Mr. Marzolf overlooks is that the Board now can consider not only the “minor” details and monetary amounts involved in the violations laid out in allegations 1-30 of the most recent complaint, but also that the more recent fact situations are so similar to the situations presented in the body of the earlier Consent Order as to be, in a sense, a compounding of the fault for which the Licensee now should be accountable. In addition, his stipulated actions indicate a lack of cooperation with the Board.

Mr. Marzolf urges the Board to consider that during most of the time period covered in Allegations 1-30 (since late 1999), he was involved in an “extremely chaotic” divorce. During that time, he alleges his assets were “frozen” and he could not get a loan to cover routine obligations such as inspection fees. Apart from that sweeping allegation, no facts were submitted to explain the Respondent’s alleged inability to pay and related failure to file for inspections. For its part, the Committee offered testimony and documents implying that the inspection fees left unpaid may have been far larger than the Respondent assumes, and that he had been warned repeatedly in writing of the need to file requests for inspection and to pay the requisite fees.

The Respondent believes that payment by him of the civil penalty and delinquent fees should be sufficient, and urges the Board to allow him to continue to operate without a suspension or revocation of his licenses. He alleges that suspension of the master and contractor licenses would deprive him of his livelihood because he can find no work in the Little Falls/St. Cloud area as a journeyman electrician for at least a year. He alleges that removing his licenses would “cost (him) a \$100,000 business”. He proposes that the Board allow him to enter a partnership or hire a business manager to handle the required filings for the various jobs and contract work he undertakes in the future.

To the Respondent’s credit, he did pay the \$2,500 fine imposed by the 2000 Consent Order in a timely manner. To that extent, his willingness to be cooperative has been demonstrated. He has also paid the Board a sum sufficient to cover all of the outstanding electrical inspection and investigation fees involved in the earlier contested cases-\$1,885. This fact also mitigates in his favor. At the hearing, Executive Secretary John Schultz appeared to acknowledge that Mr. Marzolf was “up to date” in the payment of outstanding fees, but it is unclear if the fees cover all inspections related to the current contested case.

Against those favorable facts, the Licensee admits he twice missed conferences with the Complaint Committee last summer, the second time completely without excuse. See Allegations 25-29. Also worthy of consideration is that the Respondent was formerly a contract state electrical inspector for two separate periods, aggregating several years of experience. The implication is that he certainly knew or should have known of the requirements to file requests for inspection and to pay inspection and reinspection fees.

R.C.L.